

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TYRONE P. JAMES,	:	1:CV-01-1015
Plaintiff,	:	
v.	:	
	:	
YORK COUNTY POLICE DEPARTMENT,	:	(KANE, D.J.)
AGENT JAMES H. MORGAN, DETECTIVE	:	(MANNION, M.J.)
RICHARD PEDDICORD, DETECTIVE	:	
RAYMOND E. CRAUL, SERGEANT GENE	:	
FELLS, DETECTIVE KESSLER,	:	
CORRECTION OFFICER BAYLARK, RANDY	:	
SNIPES, BRIAN WESTMORELAND,	:	
and DETECTIVE GLOWCZESKI,	:	
Defendants.	:	

DEFENDANT CORRECTION OFFICER BAYLARK AND
YORK COUNTY PRISON’S BRIEF IN OPPOSITION TO
MOTION OF PLAINTIFF FOR APPOINTMENT OF COUNSEL

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On June 8, 2001, inmate Tyrone P. James, a prisoner confined in the York County Prison filed a complaint alleging a violation of his constitutional rights under 42 U.S.C. § 1983.

On March 11, 2003, Magistrate Judge Mannion filed a Report and Recommendation in which the Court recommended dismissal of Plaintiff's claim because he had not exhausted his administrative remedies.

Plaintiff filed an Objection to the Magistrates Recommendation, which was opposed by Defendants, Officer Baylark and York County Prison.

Plaintiff has now requested that the Court appoint counsel for him. Defendants file this Brief in Opposition to Plaintiff's Motion for Appointment of Counsel.

II. QUESTIONS PRESENTED FOR REVIEW

A. SHOULD COUNSEL BE APPOINTED TO REPRESENT PLAINTIFF IN THE ABOVE-CAPTIONED CASE?

III. ARGUMENT

A. PLAINTIFF'S MOTION TO DISMISS AND FOR APPOINTMENT OF COUNSEL SHOULD BE DENIED.

Plaintiff has no constitutional rights to appointment of counsel in a civil case. It is noted that the Court does have discretionary power to appoint counsel under 28 U.S.C. §1915(d). Tabron V. Grace, 6 F.3d 147 (3d. Cir. 1993); Ray v. Robinson, 640 F.2d 474, 477 (3d. Cir. 1981).

The language, in the forma pauperis statute, does not restrict the Court's discretion to appoint counsel. However, there are practical considerations that must be noted. Appointing a lawyer who is duty-bound under the Canons of Ethics to represent his client by Court is deprived of the ability to refuse to proceed with unfounded and unwarranted litigation. Normally, the employment of counsel for an indigent litigant is to be made "upon a showing of special circumstances indicating the likelihood of substantial prejudice to him resulting, for example, from his probable inability without such assistance to present the facts and legal issues to the Court in a complex but arguably meritorious case." Smith-Bay v. Petsock, 741 F.2d. 22, 26 (3d. Cir. 1984).

In his Motion, the Plaintiff avers no exceptional circumstances that exist, which would warrant the appointment of counsel. In addition, the Plaintiff does not have a meritorious case. The Motion is merely an extension of his original Complaint, which is frivolous and without a valid legal or factual basis.

It is submitted that the inmate has failed to identify valid grounds for the appointment of counsel. With the Court's liberal construction of pro se pleadings, Haines v. Kerner, 404 U.S. 519 (1972), and the prisoner's ability to communicate his complaints, there is no valid reason to appoint counsel. The legal issues are not complicated, and if at any time it appears to the Court that the Plaintiff will suffer prejudice, an appropriate appointment may be made at that time.

IV. CONCLUSION

Plaintiff's request for the appointment of counsel should be denied. There is no reason to continue the frivolous litigation.

Respectfully submitted,

By: /s/ Donald L. Reihart, Esquire
Donald L. Reihart, Esquire
Sup. Ct. I.D. #07421
3015 Eastern Boulevard
York, PA 17402-2904
Telephone (717) 755-2799

Date: May 2, 2003

Assistant Solicitor for York County

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SNIPES, BRIAN WESTMORELAND,	:	
and DETECTIVE GLOWCZESKI,	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I, Donald L. Reihart, Esquire certify that a true and correct copy of the foregoing Defendant's Brief In Opposition to Plaintiff's Motion for Appointment of counsel was caused to be served on the date shown below by depositing same in the United States mail, first-class, postage prepaid thereon, addressed as follows:

Tyrone P. James, EX-9451
SCI-Rockview
P.O. Box A
Bellefonte, PA 16823

Linda S. Lloyd, Esquire
15th Fl. – Strawberry Square
Harrisburg, PA 17120

Respectfully submitted,

By: /s/ Donald L. Reihart, Esquire
Donald L. Reihart, Esquire
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York, PA 17402-2904
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